

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CHARTER COMMUNICATIONS	:	
ENTERTAINMENT I, LLC d/b/a	:	
CHARTER COMMUNICATIONS	:	
OF WESTERN CONNECTICUT,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:00CV287 (CFD)
	:	
DONALD McGUINNESS,	:	
Defendant.	:	

RULING

Pending are the defendant's request to file a countersuit, dated October 3, 2002 [not docketed], his Request for Documents from Plaintiff [not docketed], and demand for a jury trial [Doc. # 36], dated October 8, 2002, as well as the plaintiff's Motion to Strike Defendant's Demand for Jury Trial [Doc. # 37], filed October 11, 2002 and Motion to Strike Defendant's Request for Documents [Doc. # 40], filed October 30, 2002. For the following reasons, the defendant's request for jury trial and request to file countersuit are DENIED. The defendant's request for documents is DENIED, without prejudice. The plaintiff's motion to strike defendant's jury demand is DENIED as moot, and its motion to strike the document requests is DENIED.

Defendant's Request to File a Countersuit

The Court finds that the defendant's additional claims, filed over one year after his last responsive pleading, are untimely and that the plaintiff would be prejudiced by their addition at this late date. See U.S. v. TDC Management Corp., No. 89-1533, 1991 WL 35528, at *1 (Feb. 23, 1991 D.D.C.) ("It would be unfair and prejudicial to require plaintiff to address these new issues at trial.") (citing Walton, M.D. v. Jennings Community Hospital, 875 F.2d 1317, 1324 (7th Cir.1989)). This

ruling is WITHOUT PREJUDICE to the defendant filing a separate action based on these claims following the resolution of this case.

Defendant's Document Requests

The defendant's request for documents is DENIED, as moot, in light of the plaintiff's agreement to provide the defendant with some of the requested documents. This ruling is WITHOUT PREJUDICE to the defendant filing a subsequent document request. Accordingly, the plaintiff's motion to strike the request for documents [Doc. # 40] is DENIED, as moot.

Defendant's Jury Demand

The plaintiff argues that the defendant's jury demand should be denied for two reasons. It asserts that 1) there is no right to a trial by jury in cases seeking statutory damages under 47 U.S.C. §§ 553 and 506 and 2) the defendant effectively waived his right to a jury trial by not raising it within the time frame provided by Fed.R.Civ.P. 38(b).

Statutory Damages Under 47 U.S.C. §§ 553 and 506

In Tull v. U.S., 481 U.S. 412 (1987) the U.S. Supreme Court outlined the test for determining whether a statutory cause of action gives rise to a right to trial by jury. Pursuant to Tull, if a statute is ambiguous¹ as to whether a jury right accompanies a cause of action, the court must determine whether the Seventh Amendment affords the right to a trial by jury. The Seventh Amendment affords such a right only if the relief sought by the litigant is legal. Equitable relief is not accompanied by such a right.² Relief is considered legal, as opposed to equitable, for this purpose if it is analogous to a common law

¹If the statute clearly indicates that there is a right to a jury trial, then the inquiry is at an end.

²The Seventh Amendment provides, in relevant part: "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

remedy that existed as of 1791, the year of the Seventh Amendment's adoption.

Title 47 U.S.C. §§ 553 and 605 do not contain language explicitly granting the right to trial by jury for statutory damages. Thus, under Tull the dispositive issue is whether the statutory damages under this section constitute a legal or an equitable remedy. The Second Circuit has not ruled on this issue. The district courts, in both the Second Circuit and throughout the country, are divided regarding the resolution of this question. See Time Warner Cable of New York City v. Kline, Davis & Mann, Inc., No. 00CIV2897KMWHBP, 2000 WL 1863763 (Dec. 20, 2000 S.D.N.Y.) (“Four district courts have held that there is a right to trial by jury in such cases An equal number of district courts have reached the opposite conclusion.”) This Court finds persuasive the reasoning of those cases that find that the statutory damages under this section are restitutionary, and therefore equitable, in nature. In Storer Cable Comm. v. Joe's Place Bar and Restaurant, 819 F. Supp. 593 (W.D. Ky. 1993), the court found that the statutory damages under §§ 553 and 605 were restitutionary for two reasons. First, the court reasoned that “[r]estitution is particularly appropriate, as here, where a plaintiff's loss, albeit not definable in terms of actual loss, is more than a defendant's gain.” Id. at 596-97. Second, the court noted that “the discretionary nature of a statutory damages award further supports a restitutionary characterization. The statute employs the phraseology ‘as the court considers just’ and ‘the court in its discretion.’” Id. at 597. This Court agrees that the discretionary nature of statutory damages makes them particularly ill-suited to determination by a jury. As this Court finds that statutory damages under this statute constitute an equitable, rather than legal, remedy, there is no right to a trial by jury in this case. Having reached this conclusion, the Court need not consider whether McGuinness has waived this right by failing to raise it in a timely manner.

For the forgoing reasons, the defendant's demand for a jury trial is DENIED. In light of the

Court's ruling on the defendant's motion, the plaintiff's motion to strike the jury demand [Doc. # 37] is accordingly DENIED as moot.

SO ORDERED this ____ day of September 2003, at Hartford, Connecticut.

Christopher F. Droney
United States District Judge